IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECONDDAY OF DECEMBER,
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 17020 of 2004

Between:

B. Ellaiah S/o Yallaiah
R/o 2/6 Brodipet, Guntur

..... PETITIONER

AND

1 The Director of Adult Education, Andhra Pradesh, Hyderabad
2 The Chairman, Zilla Saksharatha Samithi & District Collector, Guntur District
3 The Deputy Director (AE)/Joint Secretary, Zilla Saksharatha Samithi, Guntur

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, of Mandamus, or any other appropriate Writ, order or direction, declaring the action of the respondent authorities in not paying the minimum wages to the petitioner, who is a full time worker, as illegal and arbitrary and further directing the respondents to fix the pay of a full time worker.

Counsel for the Petitioner:MR.NARESH BYRAPANENI

Counsel for the Respondent No.: GP FOR HIGHER EDUCATION

The Court made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. No. 17020 of 2004

O R D E R:

The present writ petition is filed to issue a writ of Mandamus declaring the action of the respondents in not paying the minimum wages to the petitioner, who is a full time worker, as illegal and arbitrary.

According to the petitioner, he was appointed as sweeper on 1.4.1991 by the proceedings of the 3rd respondent on consolidated wage basis at the rate of Rs.25/- per month. He continued as Sweeper till 7.10.1996 on which date the 3rd respondent issued proceedings entrusting the local tappals work. Therefore, according to him, he has been working as full time sweeper from the date of appointment. By the proceedings dated 8.1.1998 the 3rd respondent re-allotted the work of different employees. The case of the petitioner is that as per G.O.Ms.No. 38 dated 26.2.1999, the petitioner is entitled for the wages of the full time contingent employees at Rs.1,000/- per month. Hence, the present writ petition.

The 3rd respondent filed counter affidavit stating that the petitioner used to come to office at 9 a.m. and complete the sweeping by 10 a.m. and thereafter he is working as Rickshaw Puller and he was not entrusted with any other work as alleged. The petitioner is neither a full time contingent employee nor a daily wage employee and his case does not come under the purview of G.O.Ms.No.38 and hence he prays to dismiss the writ petition.

The 3rd respondent also filed an additional affidavit stating that the petitioner was not a full time sweeper and the Zilla Saksharatha Samithi, which is a registered society, asked the petitioner to attend to Tappal work for which he was paid separately

by the said society and that the Government and the Zilla Saksharatha Samithi are two distinct and different entities and the case of the petitioner does not fall within the purview of G.O.Ms.No.38.

Learned counsel for the petitioner contended that the petitioner is entrusted with local tappals work by the respondents and as such he is a full time contingent employee from the date of appointment and as per G.O.Ms.No.38 dated 26.2.1999 the petitioner is entitled for wages of the full time contingent employee at Rs.1,000/- per month; that the various proceedings issued by the 3rd respondent would clearly indicate about the entrustment of work and that the timings to be observed by the petitioner and other employees are from 9 a.m. to 1 p.m. and 3 p.m. to till all the officers leave the office. Therefore, he prays to direct the authorities to pay minimum wages to the petitioner as required under law.

On the other hand, learned counsel for the respondents contended that the proceedings issued by the 3rd respondent are nothing to do with the initial appointment of the petitioner. He was being paid by the 3rd respondent for the work entrusted and the initial appointment of the petitioner as Sweeper would clearly indicate that he was appointed as Sweeper on consolidated pay of Rs.75/- per month. As the petitioner was not appointed as a full time contingent employee or as a daily wage employee, he does not come within the purview of G.O.Ms.No. 38. Hence, he prays to dismiss the writ petition.

The initial appointment of the petitioner is only as a Sweeper on a consolidated pay of Rs.75/- per month. Thereafter the 3rd respondent vide proceedings dated 7.10.1996 entrusted the duty of tappals and other office work that may be entrusted by the Project Officer and the petitioner is required to attend the office timings, that is to say, from 9 a.m. to 1 p.m. and 3 p.m. to till all the officers leave the office. The 3rd respondent also issued the proceedings dated 8.1.1998 entrusting the local tappals and other office work to the

petitioner and the petitioner and other staff members are required to maintain the office timings scrupulously. The petitioner's claim is solely based upon G.O.Ms.No.38 dated 26.2.1999. As per this G.O., the wages of different categories of people have been enhanced as indicated below:

Casual Labours Rs.40/- per day.

Full time contingents/Consolidated

Employees Rs.1000 per month.

Part time contingent

employees Rs.625/- per month.

The above Government Order, which was issued in pursuance of the directions of this court, would clearly go to show that the casual labours, full time contingents/consolidated employees and part time contingent employees are entitled for minimum wages as mentioned therein. The Dy. Director of Education, Adult Education, Guntur appointed the petitioner on a consolidated monthly wages of Rs.75/- per month. As seen from the proceedings issued by the 3rd respondent, the petitioner was entrusted to work during the office hours. The claim of the respondents that he was entrusted with office work for one year as stated in the counter affidavit filed by the 3rd respondent cannot be accepted. In the initial appointment order there is no such stipulation. Having extracted the work from the petitioner for all these years, it is unreasonable and unjustified to deny the benefits under G.O.Ms.No.38, as the said G.O. applies to the consolidated employees also. It is stated in the counter affidavit that the petitioner was appointed as contingent sweeper in the office of the 3rd respondent on consolidated wages of Rs.75/- per month. There is no mention in the appointment order dated 1.4.1991 that the petitioner was appointed as contingent sweeper. The appointment order only goes to show that he was appointed on a consolidated wage basis at Rs.75/- per month. Therefore, the contention that the

petitioner is not a full time contingent or consolidated employee cannot be accepted. Even part-time contingent employee is entitled for minimum wages as prescribed under G.O.Ms.No. 38 dated 26.2.1999. For which category he comes is to be decided by the 3rd respondent in accordance with the office orders issued from time to time regulating the work of the petitioner.

The petitioner seems to have given a representation to the 2nd and 3rd respondents seeking enhancement of his wages, but the same was not considered. One fact required to be noticed is that the budget of the 3rd respondent-Saksharatha Samithi is controlled by the Finance Department. Therefore, the 3rd respondent has to pass appropriate orders on the representation of the petitioner, if available with them. If it is not available, the petitioner is directed to file a representation to the respondents within a period of one week from the date of receipt of a copy of this order and thereafter the same shall have to be considered in accordance with law, particularly with reference to G.O.Ms.No. 38 dated 26.2.1999.

The writ petition is disposed of accordingly.

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K.C. Bhanu, J.

Date: 02--12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Director of Adult Education, Andhra Pradesh, Hyderabad

2 The Chairman, Zilla Saksharatha Samithi & District Collector, Guntur District
3 The Deputy Director (AE)/Joint Secretary, Zilla Saksharatha Samithi, Guntur

3. 2CCs to Government Pleader for Higher Education, High Court Buildings, Hyderabad.

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